UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES	)	**CRIMINAL ACTION**
v.	)	**Docket No. 18-40042-TSH**
SETH DECOTEAU	)	

MEMORANDUM AND ORDER ON DEFENDANT'S MOTION TO SUPPRESS (Docket No. 41)

August 26, 2019

Seth Decoteau ("Defendant") is charged with being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g)(1). On April 24, 2019, Defendant filed a Motion to Suppress Evidence, alleging that the evidence, including two shotguns, two rifles, a silencer, and ammunition found in his home, was obtained pursuant to a constitutionally flawed search warrant. (Docket No. 41). For the reasons stated below, Defendant's motion is ***denied***.

Findings of Fact

Based on the evidence in the record, briefings, and credible testimony, I make the following findings of fact:

On June 7, 2018, the following individuals were present at Still Hart's Café ("Hart's") in North Brookfield, Massachusetts shortly it closed around 1:00 a.m.: Jessica Sweeney ("Sweeney"), Molly McKee ("McKee"), Amber Wiley ("Wiley"), Jesse Lake ("Lake"), David Earle ("Earle"), and Defendant. Sweeney worked as the bartender that night and recalled serving Defendant one shot of liquor and one beer. Although Sweeney did not recall seeing Defendant with the other individuals, Defendant was in contact with McKee who invited him to Hart's. Sometime before closing, Earle asked Sweeney if she and her friends (referring to the individuals mentioned above,

except for Defendant) wanted to go to his home after she closed Hart's. Sweeney closed the bar shortly after 1:00 a.m. and met Earle and her friends in the parking lot. Sweeney drove the group to Earle's house, located at 10 Ward Street, in McKee's vehicle. Defendant was not part of this group and he was not invited to 10 Ward Street. After arriving at 10 Ward Street, McKee and Sweeney each received multiple calls from Defendant, which they ignored.

The group left Earle's car at Hart's that night. Sometime after they left the bar, Defendant vandalized the car.

The group at 10 Ward Street was playing pool and drinking when Defendant arrived uninvited. Knowing that McKee was inside and wanting to see her, Defendant repeatedly banged on Earle's door. Defendant eventually entered the house and tackled Earle. The other individuals removed Defendant from the house. However, Defendant yelled and again banged on the door. At 2:43 a.m., Earle called the police and told the dispatch operator "[t]here's someone trying to break in my back door." (Docket No. 41, at 2). While Earle was on the phone with the operator, Sweeney claimed that Defendant pulled out a black handgun, held it in his left hand, and pointed it at her, which Earle relayed. (Docket No. 41-1, at 2-3). During the 911 call, Defendant left.

At approximately 2:44 a.m., Lieutenant Ryan Daley ("Daley") responded to 10 Ward Street where he spoke to the five witnesses. The witnesses identified Seth Decoteau as the perpetrator, provided Daley with a description of his vehicle (a green Ford pick-up truck), and his possible home address on Evergreen Street in North Brookfield. Daley conveyed this information to fellow officers over the radio.

Subsequently, Officer Kyle Lareau ("Lareau") and Officer Matthew Niles ("Niles") reported to Evergreen Street to see if Defendant had returned to his home. At approximately 2:50 a.m., Niles and Lareau saw Defendant driving his truck near 14 Evergreen Street. Defendant

backed out of the driveway at 14 Evergreen Street and onto the lawn across the street. He then quickly pulled away, causing damage to the lawn. This led officers to believe that Defendant had returned to his residence, perhaps to return the firearm. Niles pulled in front of Defendant's truck, cutting off his path and effectively stopping Defendant at the intersection of Evergreen Street and South Main Street, not far from his residence. Lareau then pulled up behind Defendant's truck. Niles exited his cruiser, unholstered his firearm, and ordered Defendant to exit the vehicle. Defendant exited the vehicle and Niles then ordered him to place his hands on the bed of the truck. Niles performed a pat frisk of Defendant, which revealed no weapons. During this pat frisk, Niles and Lareau asked him if he had any firearms in the truck or if he had any weapons on him at all. Defendant informed officers that there were no firearms in the truck but that he did have guns in his home. Niles also noted that Defendant had blood shot eyes, slow speech, and smelled of alcohol.[1]

Officers Paul Cowden ("Cowden") and John Bell ("Bell") arrived on the scene at Evergreen Street to assist Lareau and Niles. Cowden activated his bodycam when he arrived. Sometime after Cowden and Bell arrived on scene, Niles left for 10 Ward Street to obtain written statements from the witnesses there.

[1] Defendant claims that he did not tell Lareau that he had guns in his home during the frisk but only later when he was in the police cruiser before he was arrested. The conversations recorded by the bodycam support the Court's finding that Lareau's version of events is more credible. First, I find that Defendant's account is unlikely to be entirely accurate. Although the cruiser where Defendant was sitting cannot be seen for a brief portion of the footage, other officers are in view and at no point are the cruiser doors open. Defendant was highly intoxicated, and it would not be surprising if his recollection of the events is inaccurate. Further, Defendant stated in his affidavit that "all of the officers were armed." (Docket No. 41-3, at 1). However, statements from the officers indicated that Niles holstered his weapon before the pat frisk, and at no point during the bodycam footage is any officer seen with his gun drawn. Additionally, in support of Lareau's testimony, the bodycam footage recorded a conversation where Lareau told the other officers, "[Defendant] said he's got shotguns and stuff…straight up said he had shotguns." (Bodycam Footage, at 20:47-20:52). This is the first time during the footage that there is any reference to statements made by Defendant regarding guns at his home. Thus, the conversation between Defendant and Lareau must have occurred before this time, which supports Lareau's timeline.

Defendant's hands remained on the truck bed while Cowden questioned him. Cowden asked why the witnesses at 10 Ward Street said Defendant had a gun, since Defendant claimed he did not. Defendant said that all he had with him at 10 Ward Street was his knife. While Cowden asked Defendant questions, other officers searched Defendant's truck and found an open bottle of Jack Daniels. Like Niles, Cowden also noticed an odor of alcohol on Defendant's breath. Cowden informed Defendant that he was not under arrest but asked him to sit in the police cruiser for a moment. Defendant sat inside one of the police cruisers and an officer closed the door.

Daley and Cowden exchanged information that they had learned from the witnesses at 10 Ward Street and Defendant, respectively. Both officers believed that the individuals at 10 Ward Street had been using cocaine that night. Daley informed Cowden that Sweeney was adamant that Defendant had a gun when he was attempted to get inside the home at 10 Ward Street. Both officers determined that after Defendant left 10 Ward Street, it was possible that he returned home, stashed the gun, and was on his way back to 10 Ward Street.

Cowden then returned to the police cruiser and opened the door to further question Defendant. Defendant told Cowden that he was holding his phone in his hand when he was banging on the door, suggesting that perhaps Sweeney mistook it for a gun. Cowden then ordered Defendant out of the police cruiser and administered three field sobriety tests. Cowden arrested Defendant for operating a motor vehicle under the influence, placed him in handcuffs, and seated him in the cruiser.

Before transporting Defendant to the police station, the officers discussed the events of the stop. At this time, Lareau shared with the other officers that during his initial frisk, Defendant said he had weapons in his home: "he's got shotguns and stuff . . . straight up said he had shotguns." Bodycam Footage, at 20:47-20:53. With this new information, Cowden again returned to the

cruiser to question Defendant. Defendant repeated his previous statements that he had both his knife and his phone with him when he was banging on the door but no gun. He suggested that he may have used his knife to bang on the door and perhaps that was what Sweeney saw and confused for a handgun. After several questions, Defendant responded that he does not even own a handgun, only hunting guns, which were locked up in his home.

While searching the vehicle, an officer retrieved a bag of spent shell casings from Defendant's truck. When officers asked about these, Defendant told them that he picked up the casings at the firing range because he scraped brass and that he did not own a 9 mm. Officers did not find a gun or a knife in the truck.

Cowden then transported Defendant to the police station, where an officer Mirandized and booked him for operating a vehicle under the influence. The officers who obtained written statements from the witnesses at 10 Ward Street returned to the police station. These officers relayed the information they learned to the other officers at the station. One officer emphasized the fact that the witnesses were "all so fucked up . . . You can smell booze from outside, that's how fucked up they are. I'm sure they're all coked out too . . . their statements are awful." Bodycam Footage, at 1:29:04-1:29:39.

Daley completed and submitted an Affidavit in Support of Application for Search Warrant. *See* Docket No. 41-7. On June 8, 2018, Judge Charles King issued a search warrant for Defendant's home at 14 Evergreen Street. *See* Docket No. 41-8. Pursuant to the search warrant, "Officers executed a search warrant at [Defendant]'s home and seized nine guns, more than 1,200 rounds of ammunition, a silencer, and a bullet-proof vest from [Defendant]'s bedroom." (Docket No. 45, at 4).

Rulings of Law

1. Voluntariness of Statements Contained in the Search Warrant Affidavit

a. Statements Made Without Miranda Warning

Officers initially stopped Defendant in his truck, questioned him while he was pat frisked, placed him in a police cruiser, formally arrested him, and continued to question him, all before Mirandizing him. There is no dispute that Defendant was not informed of his rights until he was booked at the police station for operating under the influence.[2] The question here is whether Defendant should have been informed of his rights before he made the statements to during the initial pat frisk.

Pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), "law enforcement officers [must] employ procedural safeguards to ensure that a suspect's Fifth Amendment privilege against self-incrimination is respected." *United States v. Jackson*, 544 F.3d 351, 356 (1st Cir. 2008). Accordingly, officers "must give a suspect proper *Miranda* warnings before he is subjected to custodial interrogation." *Id.* A suspect is in custody when "viewed objectively, [the] circumstances constitute the requisite 'restraint on freedom of movement of the degree associated with a formal arrest.'" *United States v. Hinkley*, 803 F.3d 85, 90 (1st Cir. 2015) (quoting *United States v. Hughes*, 640 F.3d 428, 435 (1st Cir. 2011)). Additionally, an officer interrogates a suspect when he or she uses "any words or actions . . . (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Jackson*, 544 F.3d at 357 (quoting *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980)).

In *Berkemer v. McCarty* the Supreme Court specifically addressed "whether a traffic stop exerts upon a detained person pressures that sufficiently impair his free exercise of his privilege

[2] The government concedes that Defendant's statements made after he was formally arrested for operating under the influence, but before he was informed of his rights, were involuntary. Therefore, this Court will not consider those statements.

against self-incrimination to require that he be warned of his constitutional rights." 468 U.S. 420, 437 (1984). The Court reasoned that "[f]idelity to the doctrine announced in *Miranda* requires that it be enforced strictly, but only in those types of situations in which the concerns that powered the decision are implicated." *Id.* Therefore, although "a traffic stop significantly curtails the 'freedom of action' of the driver and the passengers, . . . [t]wo features of an ordinary traffic stop mitigate the danger that a person questioned will be induced 'to speak where he would not otherwise do so freely.'" *Id.* at 436-37 (quoting *Miranda*, 384 U.S. at 467). First, they are "presumptively temporary and brief" making them "quite different from stationhouse interrogation[s]" *Id.* at 437-38. Second, the typical traffic stop is "substantially less 'police dominated,'" *id.* at 439, because it usually occurs in public and the "detained motorist typically is confronted by only one or at most two policemen." *Id.* at 438. Accordingly, the Court held that "persons temporarily detained pursuant to such stops are not 'in custody' for the purposes of *Miranda*." *Id.* at 440.

The First Circuit explained that, following *Berkemer*, courts must

> determine whether the facts of a specific case indicate a situation more akin to a routine traffic stop, at which *Miranda* warnings are not required, or indicate that a suspect has been 'subjected to restraints comparable to those associated with a formal arrest,' at which point *Miranda* warnings are required.

United States v. Campbell, 741 F.3d 251, 266 (1st Cir. 2013) (quoting *Berkemer*, 468 U.S. at 441). The test is objective, and courts must determine whether a reasonable person in the situation would understand they are "being held to 'the degree associated with a formal arrest.'" *Id.* (quoting *United States v. Fornia-Castillo*, 408 F.3d 52, 63 (1st Cir. 2005)). To assist in that determination, the court provided a non-exhaustive list of factors to consider:

> (1) whether the suspect was questioned in familiar or at least neutral surroundings'; (2) the number of law enforcement officers present at the scene; (3) the degree of physical restraint placed upon the suspect; and (4) the duration and character of the interrogation.

Id. (quoting *United States v. Hughes*, 640 F.3d 428, 435 (1st Cir. 2011)).

In *Campbell*, the First Circuit found a hotel parking lot to be a neutral location. *Id.* at 267. Here, I find that Evergreen Street, where Defendant was stopped, was not only a neutral location, but a familiar location for Defendant—he lived on that street. *Cf. United States v. Crooker*, 688 F.3d 1, 11 (1st Cir. 2012) (finding a defendant was not in custody for *Miranda* purposes and noting that the interrogation was "significantly less intimidating" because it was conducted in his home). The court in *Campbell* also determined that a ratio of one suspect to two officers was not overwhelming for a suspect. *Campbell*, 741 F.3d at 267; *see also Crooker*, 688 F.3d at 12 (concluding suspect was not in custody where "no more than two agents were in direct conversation" with him at one time). At the time in question, Niles and Lareau were the only officers present at the scene, a ratio of one suspect to two officers. Further, although officers initially had their weapons drawn, they were legitimately concerned for their safety and shortly thereafter holstered their weapons. *Cf. Crooker*, 688 F.3d at 4, 11-12 (holding that suspect was not in custody where law enforcement officers initially approached house with weapons drawn); *United States v. Rabbia*, 699 F.3d 85, 92 (1st Cir. 2012) (holding that suspect was not in custody where, to neutralize the risk of harm, drew his weapon, applied handcuffs, and pat-frisked the suspect). Defendant was also not physically restrained during the relevant questioning. He placed his hands on the truck and the officers did not have their weapons drawn or pointed at him, handcuffs were not yet placed on him, and he had not yet been put in the police car. *See Campbell*, 741 F.3d at 267 (noting that neither suspect "was physically restrained at the time of the questioning"). Last, like in *Campbell*, there is no indication that "the officers acted with hostility toward the defendant[ ]." *Campbell*, 741 F.3d at 267. The bodycam footage demonstrates that officers treated Defendant with respect.

This Court finds that at the time of the initial pat frisk, when Defendant first made statements to the officers acknowledging that he had firearms at his home, Defendant was not in custody for the purposes of *Miranda*, and his statements are considered voluntary and may be used as evidence.

b. Statements Made While Intoxicated

Defendant next argues that, because the officers were aware that Defendant had been drinking, they "took advantage of his confused state of mind." (Docket No. 41, at 18).

In *United States v. Palmer*, the First Circuit indicated that "[i]n the context of the voluntariness of a confession, a defendant's mental state by itself and apart from its relation to official coercion never disposes of the inquiry into constitutional voluntariness." 203 F.3d 55, 61-62 (1st Cir. 2000); *see also United States v. Byram*, 145 F.3d 405, 407 (1st Cir. 1998) ("[O]nly confessions procured by *coercive official tactics* should be excluded as involuntary." (emphasis in original)). Here, there is no evidence that officers did not coerced Defendant. They asked simple questions, which he willingly answered. Accordingly, I find that Defendant's statements were voluntary.

2. Evidence Obtained Through Search of Defendant's Vehicle

"Under the 'automobile exception' to the Fourth Amendment, police officers may seize and search an automobile prior to obtaining a warrant where they have probable cause to believe that the automobile contains contraband." *United States v. Silva*, 742 F.3d 1, 7 (1st 2014). "Probable cause exists when 'the facts and circumstances as to which police have reasonably trustworthy information are sufficient to warrant a person of reasonable caution in the belief that evidence of a crime will be found.'" *Id.* (quoting *Robinson v. Cook*, 706 F.3d 25, 32 (1st Cir. 2013)). "All that is required is the kind of 'fair probability on which reasonable and prudent people,

not legal technicians, act.'" *United States v. White*, 804 F.3d 132, 136 (1st Cir. 2015) (quoting *Florida v. Harris*, 568 U.S. 237, 244 (2013)).

Witnesses at 10 Ward Street told officers that Defendant had a gun. Shortly thereafter, they encountered him in his truck after tearing up his neighbor's lawn. I find they had probable cause to believe a firearm was in the vehicle. *See Acosta v. Ames Dep't Stores, Inc.*, 386 F.3d 5, 10 (1st Cir. 2004) ("The uncorroborated testimony of a victim or other percipient witness, standing alone, ordinarily can support a finding of probable cause."). While officers described the witnesses as "all coked out," this does not necessarily render their accounts unreliable.[3] Of course, "[a] prudent officer *may* balk if . . . the person leveling the accusation is babbling or inconsistent, *Gramenos v. Jewel Companies, Inc.*, 797 F.2d 432, 439 (7th Cir. 1986) (emphasis added), but he is not required to do so. In *B.C.R. Transport Co., Inc. v. Fontaine*, the First Circuit held that a jury could have found that officers acted without probable cause where the witness was "yelling obscenities and repeating incoherent phrases." 727 F.2d 7, 9 (1st Cir. 1984). In *Acosta*, however, the First Circuit

[3] Defendant also points out that officers on the scene seemed to believe his story. It is true that officers entertained Defendant's version of events and seemed willing to credit both his explanation for the shell casings and his insistence that he only had his knife and phone at 10 Ward Street. For instance, despite Sweeney's claim that she saw Defendant brandish a black handgun, Cowden told Daley that Defendant "had the knife and he was banging the door with the knife, so that's probably what they saw." Bodycam footage, at 24:47-24:50. During this discussion, Lareau mentioned that in Defendant's truck they found, "just those spent casings, [Defendant] said he picked them up at the range." *Id*, at 26:07-26:09. In response, another officer said, "I buy that." *Id*, at 26:09-26:11. Referring to the spent casings, another officer noted, "It's [probable cause] too." *Id*, at 26:11-26:14.

However, because of the objective nature of the Fourth Amendment analysis, the Court will not consider statements which evidence officers' subjective beliefs. *See United States v. Pardue*, 385 F.3d 101, 106 n.2 (1st Cir. 2004) ("Although [the police officer's] testimony . . . calls into doubt whether he believed that the information about throwing the lighter amounted to probable cause, . . . an officer's subjective belief is not dispositive of whether probable cause existed."); *United States v. Martinez*, 643 F.3d 1292, 1299 (10th Cir. 2011) ("[I]t is objective reasonableness, not subjective beliefs that governs our Fourth Amendment analysis."); *United States v. Anderson*, 923 F.2d 450, 457 (6th Cir. 1991) ("Just as a subjective belief by the arresting officer would not establish probable cause where none existed, a subjective belief by the arresting officer cannot destroy probable cause where it exists."); *see also Whren v. United States*, 517 U.S. 806, 813 (1996) ("Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.").

noted that "[t]he outcome in *B.C.R. Transport* represented the exception, not the rule." 386 F.3d at 8.

This case is not another exception. Several witnesses here identified Defendant as the person attempting to enter 10 Ward Street. The witnesses identified his green Ford pick-up truck and told police where he lived, both which proved to be accurate. *See United States v. Barbosa*, 898 F.3d 60, 72 (1st Cir. 2018) (noting that officers were able to verify some information provided by witnesses "such as the defendant's use of a gray Volvo" which "weighs in favor or a police officer's decision to treat an informant as a reliable witness"). Further, their encounter with officers was face-to-face which tends to support finding them credible. *See United States v. Greenburg*, 410 F.3d 63, 67 (1st Cir. 2005) (noting that "face-to-face contact" where officers know the identity of people supplying information supports credibility because officers "could hold the informant responsible if he provided false information"). Accordingly, I do not find that it was objectively unreasonable to rely on the witnesses and to credit Sweeney's allegation that Defendant brandished a weapon. Consequently, the shell casings found in Defendant's car need not be suppressed.[4]

3. Nexus Between Defendant's Home and a Black Firearm

Defendant argues that the warrant affidavit did not properly establish probable cause that "a black semiautomatic firearm" was located at Defendant's home. (Docket No. 41, at 12).[5] The Fourth Amendment provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched." U.S. Const. amend. IV. The requisite probable cause exists when "the affidavit upon which a warrant is founded

[4] Further, Defendant told officers that he had banged on the window with his knife. Cowden noted that, if true, Defendant could have been charged with assault with a deadly weapon. Bodycam footage, at 24:38-24:45. Therefore, the search of Defendant's car could also be justified by the reasonable belief that the knife used during assault may have been in the car.

[5] Defendant does not contend that the nexus element has not been met insofar as it applies to shotguns, rifles, or ammunition.

demonstrates in some trustworthy fashion the likelihood that an offense has been committed and that there is sound reason to believe that a particular search will turn up evidence of it." *United States v. Aguirre*, 839 F.2d 854, 857-58 (1st Cir. 1988); *see also Illinois v. Gates*, 462 U.S. 213, 239, 103 S.Ct. 2317 (1983) ("Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others."). "The magistrate issuing the warrant must look to the totality of the circumstances in order to ascertain the existence of probable cause. *United States v. Schaefer*, 87 F.3d 562, 565 (1st Cir. 1996). Further, "[t]his holistic approach also applies when a district court is called upon to evaluate a magistrate's determination that, based on the totality of the circumstances indicated in a supporting affidavit, probable cause exists to search particular premises. *Id.* Importantly, however, "[a] magistrate's 'determination of probable cause should be paid great deference by reviewing courts.'" *Gates*, 462 U.S. at 236 (quoting *Spinelli v. United States*, 393 U.S. 410, 419 (1969)).

"A warrant application must demonstrate probable cause to believe that (1) a crime has been committed – the 'commission' element, and (2) enumerated evidence of the offense will be found at the place to be searched – the so-called 'nexus' element." *United States v. Ribeiro*, 397 F.3d 43, 48 (1st Cir. 2005) (quoting *United States v. Feliz*, 182 F.3d 82, 86 (1st Cir. 1999)). Defendant argues that the United States has failed to satisfy the nexus element.

The relevant inquiry for the nexus element is as follows:

> When evaluating the nexus between the object and the location of the search, a magistrate judge has to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, there is a fair probability that contraband or evidence of a crime will be found in a particular place. The application must give someone of reasonable caution reason to believe that evidence of a crime will be found at the place to be searched. The government does not need to show that the belief is necessarily correct or more likely true than false. Nexus can be inferred from the type of crime, the nature of the items sought, the

> extent of an opportunity for concealment, and normal inferences as to where a criminal would hide evidence of a crime. The reviewing court's duty is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed. And in making this inquiry, we focus on the facts and supported opinions in the affidavit, ignoring unsupported conclusions.

United States v. Joubert, 778 F.3d 247, 251-52 (1st Cir. 2015) (quotation marks and citations omitted).

I find that it was reasonable to believe that a black semiautomatic firearm would be found at Defendant's home. When officers confronted Defendant, he had backed his truck from his driveway and onto the lawn across the street. Further, officers did not find a weapon in Defendant's truck. Given the accounts of witnesses at 10 Ward Street, it was reasonable to believe that Defendant returned home to stash the black handgun he allegedly brandished there.[6] Therefore, the nexus element is met.

Conclusion

For the reasons stated above, Defendant's motion (Docket No. 41) is ***denied***.

SO ORDERED

/s/ Timothy S. Hillman
TIMOTHY S. HILLMAN
DISTRICT JUDGE

[6] As noted above, officers' subjective beliefs about the witnesses' credibility is not relevant to this analysis.